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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,181	07/25/2003	George N. Kringel	03946-P0001A	3863

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EXAMINER

WUJCIAK, ALFRED J

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,181

Applicant(s)

KRINGEL ET AL.

Examiner

Alfred Joseph Wujciak III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-17 and 19-40 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 6-14, 16-28 and 30-39 is/are rejected.
7) ☒ Claim(s) 5, 15, 29 and 40 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This is the second non-final office action for the serial number 10/627,181, PRODUCT DISPLAY DEVICE, filed on 7/25/03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30, lines 2-3, "the dispensing container" is indefinite because it cites combination/subcombination problem. "The dispensing container" is not positively cited in the preamble of claim 27.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-28, 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by

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US Patent # 5,167,392 to Henricksen.

Henricksen teaches a device (figure 2) comprising a base (201) defining a receiving area and having a bottom wall with a protuberance (221-224). The device includes a back member (202) extending upwardly from the base and a generally flexible retaining member (204,205 and 215). The back member further comprises a slider (226) and a back bracket (225). The device comprises a tensioner (219) to maintain the retaining member in tension. The base is removable from the back member. The device includes a connector (225-226) engaged with the back member. The base has a protuberance at least partially defining a receiving area.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10, 12, 35 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent # 6,663,068 to Huang.

Huang teaches a device (figure 1) comprising a base (12) defining a receiving area, a back member (11) extending upwardly from the base, a generally flexible retaining member (13) and a connector (21-22). The connector is adapted to connect the back member to a pole.

Claim Rejections - 35 USC § 103

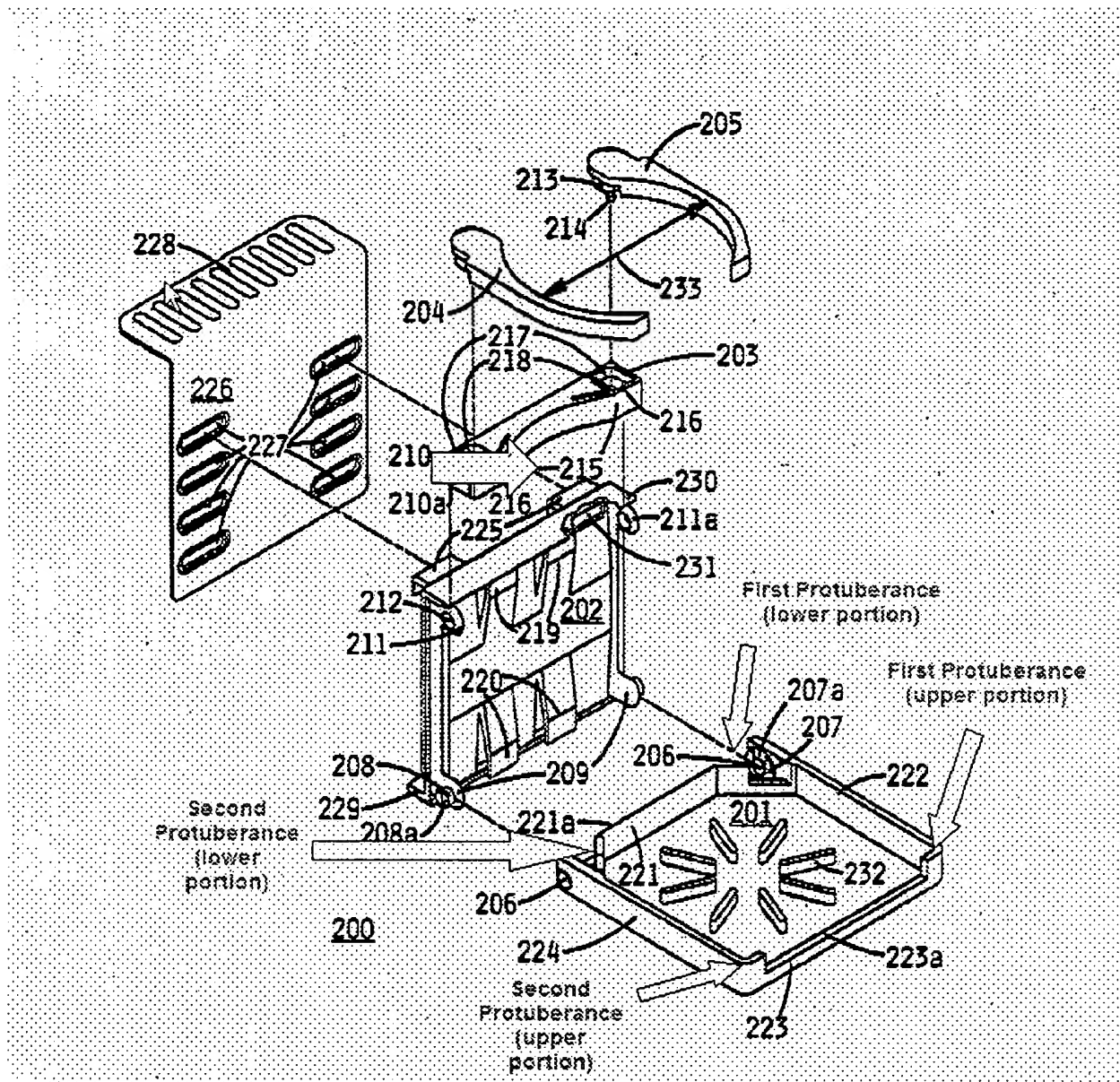
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-11, 13-14, 16-17, 19, 21-25, 32-36 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 5,167,392 to Henricksen.

Henricksen teaches a device (figure 2) comprising a base (201) defining a receiving area and having a bottom wall with a protuberance (221-224). The device includes a back member (202) extending upwardly from the base and a generally flexible retaining member (204,205 and 215). The back member further comprises a slider (226) and a back bracket (225). The device comprises a tensioner (219) to maintain the retaining member in tension. The base is removable from the back member. The device includes a connector (225-226) engaged with the back member. The base has a protuberance at least partially defining a receiving area. The protuberance has a lower portion (221) and upper portion (223). The first and second protuberances each have a lower portion and an upper portion with the lower portions being closer to the back wall than the upper portions. See drawing of figure 2 shown below for clarification.

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Henricksen teaches the flexible retaining member being wrapped around a container but fails to teach the flexible retaining member is adapted to be looped around the container. However, the specification (col. 10, lines 58-68) explains that the retaining member can be adjusted in size to accommodate the size of container, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have made the retaining member to be adapted to loop around the container to secure a smaller size of container within the device.

In regard to claims 21-25, Henricksen teaches all elements above but fails to teach the use of elements in method. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have specified steps for setting up elements together to provide convenience for holding the container.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henricksen in view of US Patent # 2004/0149765 to Pryce.

Henricksen teaches the back member but fails to teach the back member has marketing material. Pryce teaches the back member (12) having marketing material. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the marketing material to Henricksen's back member as taught by Pryce to provide advertising on the device.

Claims 21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang.

Huang teaches a device (figure 11) comprising a base (12) defining a receiving area, a back member (11) extending upwardly from the base, a generally flexible retaining member (13) and a tensioner (3).

Huang teaches the back member but fails to teach the back member is adapted to be attached to a pole. However in figure 1 in Huang invention shows that the back member is attached to the pole. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the back member in figure 11 to mount on the pole as taught in figure 1 to provide a container holder on the pole.

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In regard to claims 21 and 26, Huang teaches all elements above but fails to teach the use of elements in method. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have specified steps for installing elements together to provide convenience for setting up the container holder on the pole.

Allowable Subject Matter

Claims 5, 15, 29 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regard to claims 5 and 15, the prior art fails to teach the tensioner is a loop, hook and slide arrangement. In regard to claims 29 and 40, the prior art fails to teach a tensioner comprised of the slider, back bracket retaining member and a hook on the slide for adjusting the tension on the retaining member.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5-17 and 19-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III
Examiner
Art Unit 3632



8/16/05